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2008 APR -1 PM 3: 50

April 1, 2008

Kim Collins, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C 20463

RE: *MUR 5979*
Oberweis for Congress, Inc. and
Sharon Martin, as treasurer;
James Oberweis, individually

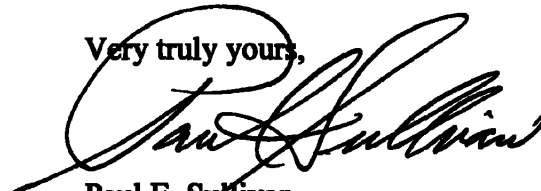
Response to Complaint

Dear Ms. Collins:

Enclosed, please find the response to the Complaint in the above referenced matter.

Should you have questions, regarding this matter, please contact me directly.

Very truly yours,



Paul E. Sullivan

cc: James Oberweis
Sharon Martin, Treasurer
Oberweis for Congress, Inc.

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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BEFORE THE FEDERAL ELECTION COMMISSION

Oberweis for Congress, Inc. and)
Sharon Martin, as treasurer;)
James Oberweis, individually)
)
)

MUR 5979
Response To Complaint

I. Introduction

In accordance with 2 U.S.C. § 437g(a)(1), this response is submitted in the above referenced matter on behalf of Oberweis for Congress, Inc., and Sharon Martin, as treasurer ("Committee") and James Oberweis, individually ("Oberweis") and who collectively are referred to herein as the "Respondents".

By a letter dated February 28, 2008, Brian Wolff, the Executive Director of the Democratic Congressional Campaign Committee filed a complaint against the Respondents alleging the Committee failed to timely file a FEC Form 10 related to several loans made by Oberweis to the Committee. The Complaint also alleges Oberweis violated provisions of a conciliation agreement he entered into related to MUR 5410. For the reasons stated below, Respondents request that the Commission make a finding of no reason to believe and close the file.

II. Factual Summary

In December, 2007, then Speaker of the House, Dennis Hastert, resigned from the U.S. House of Representatives and as a result the Governor of Illinois called for a special election to elect the successor for the Illinois 14th Congressional District seat. The special primary (S/P) election was held on February 5, 2008 which was also the date for the regular primary (Primary) for congressional elections in Illinois. A special general election (S/G) was held on March 8, 2008. The regular general election (General) is scheduled for November 4, 2008.

Oberweis filed a statement of candidacy on September 5, 2007¹ for the Illinois Republican primary for the 14th Congressional District, the election. The Committee was the only designated authorized committee for Oberweis. Oberweis subsequently was also a candidate for the S/P. Oberweis won both the regular Primary and the S/P, the latter of which placed him on the S/G ballot. Although Oberweis lost the S/G election to the Democratic nominee, G William Foster ("Foster")² he remains the Republican nominee for the November 4, 2008 General election.

¹ On July 3, 2007, Oberweis had filed a Form 1 naming an exploratory committee and amended that Form 1 on September 5, 2007 to reflect the name, Oberweis for Congress.

² Foster's authorized committee is Bill Foster for Congress Committee (Foster Committee).

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Oberweis made a series of personal loans³ to the Committee commencing July 12, 2007 and up through March 3, 2008, and each was earmarked/designated for a specific election. Although the Complaint raises issues related to only two of the loans, a complete summary of all the Oberweis loans is presented below, because the manner in which some of those previous loans were handled and reported had an impact on the two loans in question in the Complaint.

Date	Loan Amount	Designated	Election	Form 10 filed
7/12/07	\$ 50,000	P	2/5/08	No
8/9/07	\$250,000	P	2/5/08	No
10/15/07	\$325,000	P	2/5/08	10/16/07
11/19/07	\$325,000	P	2/5/08	11/20/07
12/31/07	\$340,000	S/P	2/5/08	No
1/8/08	\$350,000	P	2/5/08	1/8/08
2/7/08	\$300,000	G	11/4/08	No
2/11/08	\$340,000	SG	3/8/08	No
2/25/08	\$ 50,000	G	11/4/08	No
3/3/08	\$500,000	SG	3/8/08	3/4/08

At issue in the Complaint is the allegation that a Form 10 was not filed for the loans dated February 7 and February 25, 2008. As can be observed from the loan chart above, Form 10's had been filed for loans previous to those in question and one was filed for the March 3, 2008 loan.

Sharon Martin, (Martin) was the treasurer for the Committee at all times during the term of the Committee's operations that are the subject of the Complaint and currently holds that same position.⁴ Martin is a certified public accountant and in addition to her duties as treasurer for the Committee, she is employed as a CPA with an accounting firm.⁵

The Committee timely filed Form 10's for the October 15th⁶ and the November 19th⁷ loans which were made by Oberweis and designated for the Primary. The two Oberweis

³ All monies for the Oberweis loans were his personal funds and not generated from bank loans.

⁴ See ¶ 3 of Affidavit of Sharon Martin (Martin Aff.) attached at Exhibit A.

⁵ Martin Aff. ¶ 2

⁶ Martin Aff. ¶ 8

loans to the Committee preceding the October 15th date were designated for the Primary, however, they did not aggregate in excess of the \$350,000 threshold and therefore no Form 10 was filed.⁸

The December 31, 2007 loan, in the amount of \$340,000 was designated for the S/P than the Primary, although both elections were to take place on February 5, 2007. Since this loan was designated for a separate election other than the Primary for which the previous Form 10's had been filed, Martin contacted the Committee's FEC analyst, Rebecca Hough (Hough) before accepting the loan to determine if a Form 10 would be required to be filed. As the Committee's analyst, Hough was familiar with the previous loans received by the Committee and the Form 10's that had previously been filed for Primary loans to the Committee.

Martin explained that the Committee was about to receive a \$340,000 loan from Oberweis and it was to be designated for the S/P rather than the Primary. Martin asked if a Form 10 was required to be filed since the amount of the loan was less than \$350,000 and it was designated for a separate election; namely the S/P rather than the Primary, for which the previous Form 10's had been filed. Hough explained to Martin that since the loan was being designated for a separate election (Special Primary) and the loan was less than \$350,000, no Form 10 was required to be filed. As a result of that advice, Martin did not file the Form 10 for this loan.⁹

The January 8, 2008 loan of \$350,000 from Oberweis to the Committee was designated for the Primary. Since previous loans for the primary were in excess of the \$350,000 threshold and Form 10's had already been filed for the Primary, Martin filed a Form 10 on January 8, 2008 related to this loan.¹⁰

Oberweis won both the Primary and the S/P elections held on February 5, 2008 and as a result was the Republican party nominee for the March 8, 2008 S/G and the November 2008 General election.¹¹

On February 7, 2008 Oberweis loaned \$300,000 to the Committee which was designated for the November General election. Since these were the first loan proceeds for the General election and were not in excess of the \$350,000 threshold, no Form 10 was filed.¹²

On Friday February 8, 2008 Martin was informed that Oberweis intended to loaned \$340,000 to the Committee which was to be designated for the March 8th S/G.¹³ As a precaution, Martin wanted to make certain that a Form 10 would not be required since it was designated for a separate election. Martin called the FEC and requested to speak with

⁷ Martin Aff. ¶ 9

⁸ Martin Aff. ¶¶ 6 and 7

⁹ Martin Aff. ¶ 10

¹⁰ Martin Aff. ¶ 11

¹¹ Martin Aff. ¶ 12

¹² Martin Aff. ¶ 13

¹³ Martin Aff. ¶ 14

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Hough but was informed she was out of the office for the day. Martin asked the FEC staff person who answered the phone if a Form 10 was required to be filed for the \$340,000 that was to be loaned by Oberweis to the Committee and designated for the S/G, although there was a previous loan of \$300,000 designated for the General. The staff person stated that under those conditions a Form 10 was not required because the S/G was a separate election from the General and the aggregate amount loaned by Oberweis for the S/G was less than \$350,000. That staff person apparently checked with other staff people who confirmed that the Form 10 was not required to be filed under those circumstances.¹⁴

Since Hough was familiar with the previous Oberweis loans and the advice she had previously provided to Martin about the Form 10 filings, Martin decided to double check with Hough when she returned to the office on Monday February 11, 2008. Martin telephoned Hough on that Monday and after reviewing the same set of facts with Hough as were presented on the 8th with the other FEC staff, Hough stated she concurred with that opinion. She indicated that a Form 10 would not be required to be filed since the S/G was a separate election from the General for which the \$300,000 had previously been designated and Oberweis had not made contributions/loans aggregating in excess of the \$350,000 threshold for the S/G. Based upon that advice, the loan from Oberweis was designated for the S/G and pursuant to the advice from the FEC staff, Martin did not file the Form 10 for this \$340,000 loan.¹⁵

The Complaint alleges that this \$340,000 was originally reported as designated for the General but later amended as being designated for the S/G only after the Complaint was filed. Martin has indicated the Committee requested that the loan be designated from the start as a S/G loan and that is evidenced by the fact, her questions to the FEC staff about this loan pertained to it as being a S/G loan. Martin indicated the original reporting of the loan as a General election loan was due to her clerical mistake and that she identified the mistake herself and amended the report within 24 hours of its original filing to properly disclose the loan as designated for the S/G.

Oberweis made a \$50,000 loan to the Committee on February 25, 2008 and it was designated for the General election, bring the total Oberweis loans for the General election to \$350,000. Based upon the previous advice from Hough that the General was a separate election from the Special General and that the Oberweis loans did not exceed the \$350,000 threshold, a Form 10 was not filed by Martin.

The last of the Oberweis loans was made on March 3, 2008 in the amount of \$500,000 and it was designated for the S/G. Martin filed a Form 10 for this loan amount on March 4, 2008 because the amount of the loan caused the aggregate Oberweis loan amounts to exceed the \$350,000 for the S/G.¹⁶

¹⁴ Martin Aff.¶15

¹⁵ Martin Aff.¶16

¹⁶ Martin Aff.¶17

II. ARGUMENTS

A. Contrary to the allegations of the Complaint, based upon the facts in this matter the obligation for filing the Form 10 is determined on a separate "election" basis and is distinguishable from A.O. 2006-6.

At issue in the Complaint is whether the Committee should have filed a Form 10 as a result of the February 11, 2008 loan of \$340,000 that was designated for the S/G. The Complaint alleges that this S/G loan should have been aggregated with the preceding \$300,000 Oberweis loan of February 7, 2008 which was designated for the General since both loans came within the same "election cycle".¹⁷ If there was an obligation by the Committee to file the Form 10 for the February 11th loan as a General election transaction, then the Complaint also alleges the Committee would have an on-going obligation to file a Form 10 for the February 25, 2008 Oberweis loan to the Committee in the amount of \$50,000.

The Regulatory obligation for filing a notification speaks in terms of the expenditures from personal funds with respect to a specific election; "A candidate's principal campaign committee must notify the Commission... when the candidate makes an expenditure from personal funds *with respect to the election* that causes the candidate's aggregate expenditures from personal funds to exceed the \$350,000 threshold amount (see 11 CFR 400.9)"¹⁸ The requirement to file additional disclosures is similarly tied to cases, "...when the candidate makes expenditures from personal funds in connection with the election exceeding \$10,000."¹⁹

The Regulations mirror the statutory provisions related to notification requirements (i.e., filing of the Form 10). The statute states when a candidate, "... makes or obligates to make an aggregate amount of expenditures from personal funds in excess of \$350,000 in connection with any election, the candidate shall file a notification."²⁰

The term, "expenditure from "personal funds" is defined as an activity that must meet several criteria, including that it must be, "An expenditure made by a candidate, using the candidate's personal funds, for the purpose of influencing *the election in which he or she is a candidate*;"²¹ Subsequent to the Primary, Oberweis was a candidate for the S/G and the General election; separate and distinct elections. Note that the term "election" is not provided a unique definition for purposes of § 400.1 et seq. of the Regulations, as is the case with the term, "election cycle" which is given a unique definition for purposes of that section. Therefore, the definition of "election" is controlled by the general definition which considers a general, special, primary or runoff to be separate elections.²²

¹⁷ 11 CFR 400.2 (2007)

¹⁸ 11 CFR 400.21 (b) emphasis added

¹⁹ 11 CFR 400.22 (b)

²⁰ 2 U.S.C. 441a-1(b)(1)(C). Emphasis added.

²¹ 11 CFR 400.4 (a) (1) (emphasis added)

²² 2 U.S.C. 431(1); 11 CFR 100.2

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The determination of whether “opposition personal funds amount” exceeds the \$350,000, the “gross receipts” of a candidate’s authorized committee during an election cycle is considered part of the calculation (but does not include contributions from personal funds). This calculation is made for making the determination on June 30 and December 31 of the year preceding the year in which the general election (in this case 2007) is held.²³ A similar calculation is made for the opposing candidate’s authorized committee. These calculations tie back to the determination of the opposing candidate’s personal funds.²⁴

The plain reading of the statute and the Regulations ties the notification requirements to an election not an election cycle; it triggers when the candidate expends in excess of \$350,000 of personal funds in connection with any election, and the S/G and the General are separate elections by definition under the Act and the Regulations.²⁵ There is arguably a conflict between the statutory provisions that address the notification requirement (filing of Form 10) and the calculation to determine the opposing candidate’s personal funds.²⁶ In that situation, the statutory provision that speaks directly to the notification requirement should be the controlling authority.

In this matter the Oberweis loans in question were each designated or earmarked for a specific election in which he was a candidate; and correspondingly, the “personal funds” that were provided to the Committee by Oberweis were used to “influence” either the General or the Special General, but not both. Therefore, the use of “personal funds” for determining if they will trigger the threshold for filing a Form 10 requires that one consider for which election those personal funds are expended.

In contrast, A.O. 2006-6 presented a situation in which the candidate did not designate or earmark the funds and the elections were overlapping. In this matter the February 7th and 25th loans were earmarked for the General election and the February 11th loan was earmarked for the S/G which were not completely overlapping election dates, as was the case in A.O. 2006-6.

In this case, the candidate was faced with separate elections that fell on separate dates and the personal funds that he loan to the committee were designated for the separate elections. Based upon the proper construction and reading of the definition of “expenditure of personal funds” as a part notification requirements of the statute²⁷ the

²³ 2 U.S.C. 441a-1(a)(2)(ii)(I)

²⁴ 2 U.S.C. 441a-1(a)(2)(ii)(II)

²⁵ A.O. 2006-6 cites to floor debate in the legislative history as support for the concept that it was the intent of the authors that elections that overlap during an election cycle should be exempt from the standard FECA definition of “election” and the reporting obligation should tie to the election cycle instead. However, that is not how the statutory provisions read. The notification mandate ties to “an election” basis and at best one could argue there is a direct conflict in the statute between the time parameters for calculating the \$350,000 under § 441a-1(a) (2) and the § 441a-1(b) (1) (C).

²⁶ 2 U.S.C. 441a-1(b)(1)(C) and 441a-1(a)(2)

²⁷ 2 U.S.C. 441a-1(b)(C)

Form 10 filing obligation applies separately to separate elections and each of those elections respective election cycles.

The pertinent portions of AO 2006-06 related to a Special Election and a regular primary in which non-earmarked funds were received from the candidate was held to trigger the Millionaire Amendment provisions. However, the facts in this matter indicate that each one of the loans and each one of those three (3) loans in question during the month of February was earmarked for a specific election. The February 7th and 25th loans were designated for the General election and the February 11th loan was designated for the S/G election.

Those were material facts that were not part of the fact pattern and the question presented in A.O. 2006-06. Those are facts that are critical in the distinction of this matter and A.O. 2006-06. As a result the reliance on the holding in A.O 2006-6 is not applicable to the facts as presented in the Complaint. Secondly, the Regulations at 400.9 as properly read with the applicable definition of "expenditure of personal funds" (400.4(a)(1)) indicates when candidate contributions are earmarked for a specific election then the Form 10 obligations are determined based upon the election for which the candidate contributions were earmarked.

On that basis, the allegations of the Complaint are without merit and the Commission should make a finding of no reason to believe and dismiss this matter.

- B. The Committee demonstrated a diligence to secure proper advice from the FEC staff on matters, including the candidate contributions in question and complied with the advice provided by the FEC related to the filing of the Form 10's, and therefore in view of this detrimental reliance, the Commission should be estopped from proceeding any further with the investigation and should close the file.

The affidavit of Martin is replete with testimony of her seeking advice from the Committee's FEC designated analyst, Ms. Hough, on a variety of issues, including the question of whether a Form 10 was required to be filed related to the loans at issue in this Complaint.

The Committee was not disregarding or avoiding the Form 10 filing obligations; it filed its first Form 10 on October 16, 2007 for the Primary election when the Oberweis loans exceeded the \$350,000 threshold. The Committee again filed on November 20th as a result of the November 19th Oberweis loan, which was required since it was designated for the primary and was in excess of the \$10,000 threshold.

When it came time for a determination as to whether the December 31st loan, designated for the S/P, would require a Form 10 filing, Martin and the Committee did not unilaterally conclude the Form 10 was not required to be filed. They took a responsible

approach and contacted Hough, the Committee's FEC designated analyst. They did not merely contact a staff person on the general FEC information line, but rather the designated expert for the Committee. This was obviously not an attempt to circumvent the filing obligation but rather a demonstration of a diligent effort to get the correct information and to follow it.

Martin explained in full detail the amount of the anticipated loan, the fact it was designated for the S/P and questioned as to whether the Form 10 was required to be filed. Hough, as the Committee's analyst also had knowledge that the Committee had filed two previous Form 10's for the loans designated for the Primary election. Hough informed Martin that since the S/P was a separate election the Form 10 was not required to be filed. That advice was followed and relied upon by the Committee and a Form 10 was not filed.

What is telling is what was not said to Martin by Hough. Hough did not refer Martin to the regulations and tell her to review them; Hough did not tell Martin, that as an analyst she could not provide specific advice; she did not tell Martin to seek an opinion from private legal counsel; Hough did not indicate she would need to check with the Office of General Counsel before providing the advice to Martin; nor was there a statement by Hough that Martin should not rely upon the advice provided Hough for compliance purposes. Hough provided an unqualified opinion to Martin and Martin and the Committee followed that opinion.

From Martin's testimony, we see that seeking this advice regarding the Form 10 was not an isolated occurrence. Martin once again called Hough regarding the February 7th loan for \$300,000 which was the first such loan to be designated as a General election loan. Martin set forth all of the facts and Hough informed her that since it was a separate election and the amount of the loan was not in excess of \$350,000 then no Form 10 was required. There is neither an allegation in the Complaint nor is there a basis to conclude that this was improper information. The Primary election and the General election are considered separate election cycles.²⁸ However, again the pattern of what was not told to Martin by Hough is important. There was no qualification of the advice given, no reference to checking with the Office of General Counsel, no advice to seek private legal counsel's opinion and no admonition that Martin and the Committee could not rely on the advice provide by Hough in determining whether or not to file the Form 10.

The professional diligence of Martin to confirm whether or not a Form 10 was required was evidenced once again related to the February 11th loan amounting to \$340,000. This loan was to be designated for the S/G and once again Martin contacted Hough to determine if the Form 10 was required to be filed. However, the February 8th called to Hough by Martin resulted in FEC staff members in Hough department informing Martin that Hough was out of the office for the day. Martin presented a detailed explanation of the loan and that it was designated for the S/G and inquired as to whether the Form 10 was required.

²⁸ 11 CFR 400.2 (b)

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The staff person informed Martin that since it was a separate election, and the amount of the loans for that election did not exceed the \$350,000 threshold, no Form 10 would be required to be filed. The staff person took the precautionary effort of also seeking the opinion of another staff person, and that other person concurred that no Form 10 was required to be filed. Again however, there were no qualifications of the advice given. No indications that Martin should not rely upon the advice they were providing, no indication that they needed to check with the Office of General Counsel.

Martin, as an extraordinary precaution, delayed accepting the Oberweis loan until she could speak with Hough on the following Monday. She did call Hough on Monday February 11th and spoke with her. The details of the planned loan were presented to Hough and she informed Martin that the staff opinion she received on the previous Friday was correct. There was no need to file the Form 10 since the S/G was a separate election from the General and that the proposed loan was not in excess of the \$350,000 threshold level.

Once again, however, there was no qualification of the advice given, no reference to checking with the Office of General Counsel, no advice to seek private legal counsel's opinion and no admonition that Martin and the Committee could not rely on the advice provided by Hough in determining whether or not to file the Form 10.

Martin is a professional accountant with a CPA credential and demonstrated her thoroughness and professionalism in dealing with this issue. On four separate occasions she sought the advice of the Committee's FEC analyst to determine if the Form 10 was required to be filed relative to the respective loans at issue in this Complaint. In each instance she accepted this unqualified advice and followed the advice.

As a professional CPA, Martin would have been sensitive to any admonition or qualification related to whether she or the Committee could rely upon the advice provided by the FEC analyst. No such admonitions or qualifications were ever presented either by Hough or by the other FEC staff members with whom Martin spoke about the Form 10 issue.

Notwithstanding, the previous arguments presented as to whether the provisions of A.O. 2006-6 are binding upon this matter, the Commission has little choice but to make a finding of no reason to believe and close this matter based upon the detrimental reliance of the often and consistent advice provided by its staff to Martin and especially in light of the failure of the staff to consistently not provide any qualifications or admonitions related to the advice it was providing to Martin.

Respondents remain steadfast in their belief that the designation of the Oberweis loans to the separate elections constitutes separate instances of "expenditures of personal funds" which represents separate election cycles for determining when the Form 10 is required to be filed. However, it is wrong and violates basic rules of detrimental reliance that the Respondents should be required to proceed with protracted administrative procedures

through the MUR process and the corresponding time and expense associated with that process, in order to successfully defend itself in this Matter.

The FEC staff members that provided the advice to Martin were the staff designated by the Commission as the Committee's specified analyst and held themselves out to Martin as an authorized source permitted to provide the advice she sought and for her to rely upon that advice, especially since no admonitions to the contrary were provided. This was not a matter of Martin seeking advice from FEC staff members who were not vested with this authority as was the Committee's analyst.

Principles of equitable estoppel and just common sense dictates that the Respondents can not be held accountable for a potential violation when time and time again, Respondent often sought the advice of the agency's staff, received consistent advice and followed that advice in each instance. It is inappropriate to proceed any further in this matter in light of the actions and advice provided by the FEC staff and the reliance on that advice by the Committee. On that basis alone, the Commission should find no reason to believe and close out the matter.

C. There is no basis upon which to find Oberweis violated provisions of the conciliation agreement in MUR 5410.

The Complaint alleges that the Commission should proceed with a finding that Oberweis in his personal capacity is in violation of provisions of the conciliation agreement which he executed in MUR 5410. There is no basis for moving forward on that allegation and the Commission should make a finding of no reason to believe and close the matter.

Oberweis was a party along with his previous authorized committee in MUR 5410. The standard language in all FEC conciliation agreements contains a provision that the respondents agree not to violate the conciliation agreement in the future. No such violations of the conciliation agreement in MUR 5410 are alleged in this matter and were not taken by Oberweis.

Second, contrary to the inflammatory accusations and political rhetoric of the Complaint, alleging a knowing and willful violation of the FECA and the previous conciliation agreement, Oberweis and his authorized Committee exhibited exceptional diligence and attention to the requirements of the FECA by their consistent contact with the Committee's analyst regarding a variety of compliance issues, but especially those pertaining to the filing of the Form 10. To allege that Oberweis or the Committee knowingly and willfully took actions in violations of the FECA is a complete absurdity. The facts leave no doubt whatsoever, that the committee remains diligence in its efforts to comply with the FECA. Facts, not baseless allegations and political rhetoric should be bases for a complaint to the Commission. The Complaint fails to present any facts to substantiate is allegations and on that basis alone the matter should be dismissed.

Oberweis is the Republican nominee for the general election and for that reason it is apparent that the DCCC language and the very filing of the Complaint are riddled with attempts to use the FEC process for its political advantage against Oberweis. That is wrong and the Commission should take the affirmative step of finding Oberweis was not in violation of the previous conciliation agreement.

III Conclusion

For the reasons stated above, Respondents request the Commission to make a finding of no reason to believe related to all matters raised by the Complaint, and close the file.

Respectfully submitted,

Paul E. Sullivan
Counsel for Respondents

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 5979

AFFIDAVIT OF SHARON MARTIN

NOW COMES Sharon Martin, the undersigned affiant being of majority and a resident of the State of Illinois, who does state and testify as follows:

- 1. I am Sharon Martin., and I have personal knowledge of the facts as set forth herein.**
- 2. I reside in Oswego, IL and am a licensed CPA, employed by Gary Illg & Associates accounting firm. I have reviewed the allegation contained in the complaint which generated MUR 5979.**
- 3. In addition to my employment, I am currently, and during all times referenced in this affidavit was, the treasurer for Oberweis for Congress, Inc., the authorized committee (Committee) for James Oberweis (Oberweis) candidate for the 14th Congressional District of Illinois. There were several elections for which Oberweis was and is a candidate. The first was the special primary (S/P) and the regular primary (P) both of which were held on February 5, 2008. A special general election (S/G) which was held on March 8, 2008. Oberweis won the primary and special primary. He was therefore a candidate for the S/G on March 8, 2008, which he lost and is currently the Republican nominee for the November 2008 general election.**
- 4. My duties as treasurer include providing general accounting services and the preparation of all disclosure reports and forms for filing with the Federal Election Commission (FEC). As part of those duties, I was the person who had direct and regular contact with the Committee's FEC analyst, Rebecca Hough (Hough), to review various issues as they arose. Those issues included, methods for disclosing exploratory committee in-kind contributions, the manner in which to use FEC software for appropriate election year designation and in-kind contributions, responses to Request for Further Information related to expenditure descriptions, 3Z-1 filings, use of FEC Form 99, and various issues related to the personal loans by Oberweis to the Committee, some of which are discussed below herein.**
- 5. Oberweis made several loans to the Committee which I will identify and explain as to how they were accounted for and to which election each loan was designated.**
- 6. The first loan from Oberweis to the Committee was for \$50,000.00 and dated July 2, 2007. This loan was designated by the Committee for the Primary election,**

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scheduled for February 5, 2008. A Form 10 was not filed as the total loan amount did not exceed the \$350,000 Millionaire's Amendment threshold that would require the filing of a Form 10.

7. The second loan from Oberweis to the Committee was for \$250,000.00 and dated September 9, 2007. This loan was also designated for the Primary, scheduled for February 5, 2008. A Form 10 was not filed as the total loan amount did not exceed the \$350,000 Millionaire's threshold that would require the filing of a Form 10.
8. The third loan from Oberweis to the Committee was made on October 15, 2007, for the amount of \$325,000.00 and was designated for the Primary. A Form 10 was filed October 16, 2007.
9. The fourth loan from Oberweis to the Committee was made on November 19, 2007 for the amount of \$325,000.00 and was designated for the Primary. A Form 10 was filed November 20, 2007.
10. The fifth loan from Oberweis to the Committee was made on December 31, 2007, in the amount of \$340,000.00. However, this loan was designated for the S/P which was also to be held February 5, 2008. Prior to the Committee receiving the loan from Oberweis, I called the FEC and spoke with Hough to verify my belief that no Form 10 was required to be filed for this loan transaction. I informed her that the loan was for \$340,000 and designated for the S/P, not the Primary and that no other Oberweis loans/contributions had been designated for that S/P election. Hough confirmed that since this loan was for a different election, and the amount of loans for that election to date were less than \$350,000 the Committee was not required to file a Form 10. Based upon that confirmation, the Committee did not file a Form 10 for this loan transaction.
11. The sixth loan from Oberweis to the Committee was made on January 8, 2008 and was in the amount of \$350,000.00. This loan was designated for the Primary and a Form 10 was filed on January 8, 2008.
12. Mr. Oberweis won both the primary and special primary elections held on February 5, 2008 and was thereafter considered the Republican nominee for both the S/G and the November 2008 General election.
13. The seventh loan from Oberweis to the Committee was for \$300,000.00 and was made on February 7, 2008. This loan was designated for the General election to be held November 4, 2008. A Form 10 was not filed as this loan was for a different election and there were no other Oberweis loans or contributions designated for the General. Therefore, the \$350,000.00 threshold was not exceeded. I did not call Hough regarding whether a Form 10 would be required to be filed since it presented the same issue that I discussed with Hough related to the December 31st loan. Since the General election was clearly a separate election

and the amount was less than \$350,000 I concluded, based upon the previous discussion with Hough, the Form 10 was not required to be filed.

14. On Friday, February 8, 2008 I was informed by Committee staff that Oberweis was considering making a \$340,000 loan for the S/G. Once again, I wanted to verify with the FEC that the S/G was an election separate from the General election and a Form 10 would not be required to be filed. I concluded based upon previous advice from Hough, that since the proposed loan was for a separate election and for an amount below the Form 10 threshold filing amount, I considered a Form 10 filing was not required notwithstanding the previous \$300,000 Oberweis General election designated loan.
15. On that same day, Friday February 8, 2008, I called the FEC to speak with Ms. Hough regarding this anticipated loan from Oberweis. I was informed that she was not in the office that day so I spoke with another staff person, whose name I do not recall, regarding the proposed loan. I presented the facts related to the loan, as set out in ¶ 14 above. That staff person provided me with confirmation of my understanding that, notwithstanding the previous \$300,000 Oberweis loan designated for the General election, a loan for the S/G scheduled for March 8, 2008 was considered a loan for a separate election and therefore subject to a separate \$350,000.00 reporting threshold. The FEC staff person with whom I spoke even asked another FEC staff person at the FEC office about the issue and that other FEC staff person also confirmed that a loan of \$350,000 or less, designated for the S/G election would not trigger an obligation for the filing of a Form 10 notwithstanding the previous \$300,000 General election designated loan.
16. As an extra precaution, I wanted to double check with Hough, our assigned campaign analyst, since she was familiar with the issue and was more familiar with the information and advice she had provided about the previous loans made by Oberweis to the Committee. On Monday February 11, 2008 I called the FEC and spoke with Ms. Hough. I presented her with the same factual scenario as set out in ¶¶ 14 and 15 above, and she confirmed to me that a loan from Mr. Oberweis in an amount of \$350,000.00 or less which was designated for the S/G election would not require filing of Form 10 by the Committee notwithstanding the previous \$300,000 Oberweis loan designated for the General election. Based upon that advice and confirmation from the FEC staff, I was confident that the proposed loan could be accepted by the Committee and it would not trigger the obligation to file a Form 10. I informed Committee staff of this opinion from the FEC and based upon that advice, the Committee accepted the \$340,000 Oberweis loan on February 11, 2008, and it was designated for the S/G.
17. The ninth loan was made on February 25, 2008 by Mr. Oberweis to the Committee in the amount of \$50,000.00 and it was designated for the General election. This loan, in addition to the \$300,000.00 General election loan of February 7, 2008, brought the total Oberweis loan balance designated for the General election to be \$350,000.00. Based upon Hough's advice to me on

February 11, 2008 I considered the General election to be a separate election from the Special General and since the amount of the loans for the General election did not exceed \$350,000, the Committee did not file a Form 10.

18. The tenth loan was made by Oberweis to the Committee on March 3, 2008, in the amount of \$500,000.00 and was designated for the S/G election. A Form 10 was filed for this loan on March 4, 2008.
19. Notwithstanding the fact there was a S/G election to be held March 5, 2008, since Oberweis had won the Republican primary, Oberweis was to be on that General election ballot and the Committee was in need to expend funds for General election, (i.e., November 2008) related activities. The February 7th and 25th Oberweis loans were intended to be used to pay for post primary (i.e., February 5th) expenses that related to the General election
20. At all times that are discussed in this affidavit, it was always my professional intent to abide by the requirements of the FECA. There was not a hesitation by myself or the Committee to file Form 10's, as was evidenced by the fact the Committee filed several of them prior to the loans at issue in the Complaint. As a professional accountant it was my standard procedure to check with an authoritative source, in this case the assigned FEC analyst, when questions arose regarding the FECA, reporting issues or appropriate disclosure procedures. In that vein, when there were questions as to whether or not the Form 10 was required to be filed, I contacted Hough, the Committee's analyst, and sought her guidance. When she told me specifically what I had to do to comply with the FECA, I relied upon that advice to guide me through the process. If Hough or the FEC staff members with whom I spoke had indicated a Form 10 was required to be filed, the Committee would have filed it. If the FEC staff and analysis indicated there was no requirement to file the Form 10, then as was the case with several of the loans discussed above, the Committee did not file the Form. At no time during the discussions with Hough or the other FEC staff members was I informed that they could not provide advice and guidance on the issues I presented nor was I informed they had to first seek advice from the Office of General Counsel. There was neither a hesitancy to provide the advice requested nor were there any admonitions that I should not rely upon the advice provided.

SO SAY I.

I swear that the statements contained in this affidavit are true and correct to the best of my knowledge.


Sharon Martin
Affiant

On the 31 day of March, 2008, Sharon Martin came before me and swore that all the statements in this affidavit were true and correct to the best of her knowledge.



Stephanie K. Navarro
Notary Public

10/16/2011
Date my commission expires

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